

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| AMEREN TRANSMISSION COMPANY OF ILLINOIS |) | |
| |) | |
| Petition for a Certificate of Public Convenience and |) | |
| Necessity, pursuant to Section 8-406.1 of the Illinois |) | Docket No. 12-0598 |
| Public Utilities Act, and an Order pursuant to Section 8- |) | |
| 503 of the Public Utilities Act, to Construct, Operate and |) | |
| Maintain a New High Voltage Electric Service Line and |) | |
| Related Facilities in the Counties of Adams, Brown, |) | |
| Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton, |) | |
| Macon, Montgomery, Morgan, Moultrie, Pike, |) | |
| Sangamon, Schuyler, Scott and Shelby, Illinois. |) | |

**AMEREN TRANSMISSION COMPANY OF ILLINOIS’ RESPONSE IN OPPOSITION
TO EDGAR COUNTY CITIZENS’ PETITION FOR INTERVENTION AND MOTION
TO STRIKE PROCEEDINGS**

Ameren Transmission Company of Illinois (“ATXI” or “Company”) submits this response in opposition to the Petition for Leave to Intervene and the Due Process Motion to Strike the Proceedings and Application for Rehearing filed by the Edgar County Citizens are Entitled to Due Process. These pleadings are untimely, improper, wholly without merit, and should be rejected.

I. INTRODUCTION

A group calling itself “Edgar County Citizens are Entitled to Due Process” (“Petitioners” for purposes of this response) has filed two motions that collectively seek three forms of relief: a petition to intervene, filed on September 18, 2013, and a “due process motion to strike proceedings” and an application for rehearing filed on September 19, 2013. Each of their three requests for relief must be denied.

Petitioners were not parties to the underlying proceeding, although, as discussed below, they knew about it. They purport to consist of landowners in the vicinity of the Stop the Power Lines Coalition (STPL) Route 2 from Kansas to State Line. The Commission has entered a final

Order granting a Certificate of Public Convenience and Necessity for and approving this route on August 20, 2013, and has not granted any rehearing for that route. These Petitioners do not have a right to intervene *after* issuance of a final order. Therefore the petition to intervene is untimely. Because Petitioners have not been and cannot be granted leave to intervene, they are not, and cannot presently be, a party to this proceeding. And because Petitioners are not “parties” to this proceeding, they lack standing to seek to strike the proceedings or ask for rehearing. Thus, there is no legal basis to grant the motions.

The motions also fail on the merits. Petitioners make a conclusory claim that they “did not receive proper notice of this proceeding,” but fail to specify what notice they claim to be entitled to but did not receive. The record establishes Petitioners did in fact receive the same legally required notice of this proceeding that every other resident of Edgar County received, via public meetings and newspaper publication. What is more, Chris J. Patrick, the affiant who signed the affidavit on behalf of Petitioners claiming lack of notice of this proceeding, was the Chair of the Edgar County Board when this case was being litigated. There is no question Mr. Patrick was aware of the Illinois Rivers Project by virtue of his position; indeed, he is quoted in newspapers articles about the project. (*See Exhibit 1.*) At least one other member of the Petitioners filled out a questionnaire during ATXI public meetings, invalidating Petitioners’ claim they did not receive proper notice.

There is no legal or factual basis for Petitioners’ motions. The Commission must deny them.

II. ARGUMENT

A. The Petition To Intervene Is Not Timely

Petitioners do not cite any authority permitting intervention after issuance of a final order (and in absence of a grant of rehearing). Although the Public Utilities Act (Act) and

Commission Rules of Practice do not establish an express cut-off period for filing a motion to intervene, neither do they contemplate a party's intervention after the Commission has entered a final order.

As a matter of logic, it is not possible to provide notice of a hearing—as Section 10-110 of the Act requires—to entities (such as Petitioners) that have not intervened. 220 ILCS 5/5-110. The purpose of an evidentiary hearing is for parties to present evidence, and test other parties' evidence, so that the Commission may make a final decision based on a complete, thorough record. Post-hearing briefing further assists the Commission. To allow strangers to a proceeding to intervene and seek rehearing *after* issuance of a final order would eliminate any notion of finality of Commission orders. The time to present evidence for the Commission's consideration is before it makes its decision, not after. Thus, in the ordinary course, a party seeking to participate in a case must agree to accept the record as it is at the time of the party's intervention. *See* 83 Ill. Adm. Code 200.200(e).

Here, Petitioners plainly are not willing to accept the record as it is. They specifically ask the Commission to strike part of the record and grant rehearing. Allowing a party to intervene so that the party can turn around and seek rehearing defeats the purpose of Section 200.200(e) of the Commission's Rules. Petitioners had the opportunity to present their concerns to the Commission during the evidentiary phase of this case. The Petitioners should not be allowed to come in and upend the process just because it did not turn out the way they thought it would.

Petitioners' motions do not establish "good cause" for waiving the requirement that they accept the record as it is. They simply have not explained why they did not seek to participate in this case now. Their conclusory allegations of "lack of notice" aside, the fact is that they received the same notice as everyone else in Edgar County.

B. Petitioners Lack Standing To Bring Their Other Motions

Petitioners also seek to “strike” the proceedings “insofar as they pertain to the Edgar County segment of the project.” (Sept. 19 Motion, ¶ 9.) As a stranger to this proceeding, rather than a party, Petitioners lack standing to bring this motion—or any other motion. The title of the September 19 motion also references rehearing, but nowhere in the motion do Petitioners actually ask for rehearing. To the extent the Commission construes the pleading as a request for rehearing, the request must be denied. Again, Section 10-113(a) of the Act limits the availability of rehearing to any “party” to a proceeding, and Petitioners are not “parties.” 220 ILCS 5/10-113(a). Section 200.880(a) of the Commission's rules also states unequivocally, “After issuance of an order on the merits by the Commission, *a party* may file an application for rehearing.” 83 Ill. Adm. Code 200.880(a) (emphasis added).

Moreover, the purpose of rehearing is to correct errors and consider new evidence; not to provide a second chance to retry the case *de novo*. Section 10-113 makes clear it is the Commission that decides on the scope of the rehearing, and if a party then chooses to intervene, its “interest” in the rehearing phase is so limited. But of course rehearing must first be granted.

C. Petitioners’ Claims of Not Having Notice Lack Credibility

The substantive gist of Petitioners’ motions is that “Petitioners did not receive proper of this this proceeding as required by law.” (Sept. 19 Motion, ¶ 6.) The motions do not say what notice Petitioners believe they were entitled to, but did not receive. By process of elimination, one can only surmise that Petitioners are referring to notice of commencement of this proceeding, notice of the evidentiary hearing or notice of a proposed route. Regardless of which is the case, Petitioners’ claims are meritless.

To the extent Petitioners claim a right to notice of the evidentiary hearing, they are mistaken. Section 10-25(a) of the Administrative Procedures Act plainly states that all “*parties*

shall be afforded an opportunity for a hearing after reasonable notice.” 5 ILCS 100/10-25(a).

The Commission’s Rules of Practice define "Party" as “any person who initiates a Commission proceeding by filing an application, complaint or petition with the Commission, or who is named as a respondent, or who is allowed by the Commission or by statute to intervene in a proceeding.”

83 Ill. Adm. Code 200.40. The Petitioners are not “parties” to this proceeding—evidenced by the fact that they now belatedly seek to become parties. Petitioners were not entitled to notice of the hearing under Section 10-25(a).

Any claim that Petitioners were entitled to, but did not receive, notice that this proceeding had been commenced must also fail. ATXI has shown (and the Commission has found) that ATXI complied with all of the notice requirements of 220 ILCS 5/8-406.1(a)(3). Specifically, ATXI held at least three public meetings in Edgar County before filing the petition, and also published notice in an Edgar County newspaper for three consecutive weeks. No statute, rule or other authority required ATXI to send written letters or notices to specific individuals, as Petitioners allege. ATXI can prove that at least one of the Petitioners attended one or more public hearings because this individual filled out a comment form provided at the meeting.¹

The Petitioners’ motions do *not* claim that they did not receive notice from the Clerk of the Commission of STPL Route 2; the route the Order approves. But even if this were the case, the failure to receive notice of a particular route is not fatal to a Commission order. “The foregoing provisions for notice to owners of record shall not be deemed jurisdictional and the omission of the name and address of an owner of record from the list or lack of notice shall in no way invalidate a subsequent order of the Commission relating to the application.” 83 Ill. Adm. Code 200.150(h).

¹ It is unclear to ATXI whether the individual Petitioners, other than Mr. Patrick, actually know they are purportedly being represented in Petitioners’ filings. Therefore, ATXI is electing not to disclose the name of the individual who filled out the comment form. ATXI will provide the document to the ALJ for *in camera* inspection if desired.

Paragraph 9 of the September 19 Motion alleges that “Petitioners have a due process right to propose an alternate route, present direct and rebuttal testimony, and fully participate in Commission proceedings prior to the entry of any order affecting their property.” Whatever rights Petitioners had to propose alternate routes or file testimony in the underlying proceeding were waived because Petitioners failed to intervene, become a party, and exercise those rights. (They cannot say they did not intervene because they did not know about the proceeding, because they were lawfully apprised on the filing). Petitioners have no right to seek rehearing now because they were not parties to the underlying case. As discussed above, the purpose of rehearing is to correct errors and consider new evidence; not to provide a second bite at the apple for those who have not exercised their rights.

Notably, the only "evidence" provided as support for Petitioners' motions is the affidavit of Mr. Patrick. There is no indication in the motions that Mr. Patrick is in any position to opine on whether other Petitioners were entitled to or received any type of notice. In any case, Mr. Patrick claims that a letter sent to him by Ameren dated September 6 “was the first notice I ever received of the proposed transmission line project, and of this proceeding, ICC Docket 12-0598.” (Aff., ¶ 5) He then says, “Because I was not given any notice of this proceeding, I have not had any opportunity to participate in the case, nor to propose and [sic] alternate route, nor to submit testimony, nor to attend any hearing.” (*Id.*, at 6.)

The Commission should be aware that Mr. Patrick was the Chair of the Edgar County Board when this proceeding was being litigated. ATXI sent notices of the public meetings to the Edgar County Clerk on April 24, 2012, June 29, 2012 and September 7, 2012. (ATXI Ex. 4.7.) Edgar County officials were put on notice by virtue of this mailing. And Mr. Patrick is quoted in contemporaneous newspaper articles for his views in opposition to the Illinois Rivers Project.

(*See* Exhibit 1.) There can be no dispute that Mr. Patrick not only received notice of this proceeding; he actually knew about it.

III. CONCLUSION

Petitioners' motions do not raise any legitimate due process concerns. Having been aware of this proceeding but electing not to participate, their belated requests for intervention and rehearing must be denied.

Dated: September 30, 2013

Respectfully submitted,

Ameren Transmission Company of Illinois

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CERTIFICATE OF SERVICE

I, Mark A. Whitt, an attorney, certify that on September 30, 2013, I caused a copy of the foregoing *Ameren Transmission Company of Illinois' Response in Opposition Edgar County Citizens' Petition for Intervention and Motion to Strike Proceedings* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

/s/ Mark A. Whitt

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